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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/768,363

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Eduardo Jimenez

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EXAMINER

GUIDOTTI, LAURA COLE

ART UNIT

PAPER NUMBER

3727

MAIL DATE

DELIVERY MODE

12/03/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/768,363	<b>Applicant(s)</b> JIMENEZ ET AL.	
	<b>Examiner</b> Laura C. Guidotti	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 37-43, 45 and 46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 37-43, 45 and 46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08 September 2008 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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2. Claims 37-43 and 45-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shekalim, US 5,689,850 in view of JP 2002-10832 (see English translation of Abstract and computer generated English translation) and in further view of JP 2001-507360 (see English translation of Abstract and computer generated English translation).

Shekalim discloses a power toothbrush comprising a handle (12), a cleaning head attached to the handle (2, 6), a power source of batteries (36), an electrical motor (30), and a mechanical vibratory device (32; Column 3 Lines 24-34), the motor and the vibratory device disposed in the handle (as shown in Figure 1), the cleaning head (2) having a plurality of cleaning/treating elements (6). Shekalim does not disclose that the plurality cleaning/treating elements have characteristics that differ from other cleaning/treating elements. However, Shekalim teaches a powered device that accepts conventional toothbrushes (2) so that there is a greater variety of toothbrushes available to a user, that the user may replace a toothbrushing surface as needed, and an interchangeable head so that more than one user can use the powered portion of the device (Column 4 Lines 1-7).

JP 2002-10832 discloses the claimed invention including a toothbrush comprising a cleaning head (3) attached to a handle (see Figures), wherein the cleaning head includes a first cleaning/treating element adjacent a first end that is non-movable relative to the first head and is an endmost element at the first end (rightmost tuft 5 as shown in Figure 10c or Figure 10g), a second cleaning/treating element adjacent the free end that is non-movable relative to the free end (leftmost tuft 5 as shown in Figure

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10c or Figure 10g), and a plurality of third cleaning/treating elements disposed between the first and second cleaning/treating elements (all of the tufts 1 including support structure 2, see Figures 10c and 10g), wherein each of the plurality of third cleaning/treating elements extends from one of a plurality of support structures (2) having at least a portion that is rotatably movable relative to the cleaning head about a vertical axis extending upwardly from one of a plurality of support structures, the vertical axis extending perpendicular to a longitudinal axis of the handle (see Figure 2b that is a top view of a tuft and shows tuft movement by the arrows; see English translation of Abstract), wherein each of a plurality of third cleaning/treating elements is movable independent of any other third cleaning/treating element (see Figures), and further comprising a plurality of channels (channels are the empty regions between support structures 2), each of the channels extending transversely and substantially across a surface of the cleaning head from which the cleaning/treating elements extend (see Figure 10g, the channels would be between support structures 2) and separating a support structure from one of an adjacent support structure (in the same manner that they are separated in Figures 3-4), the free end or the first end (again, in the same manner that they are separated in Figures 3-4). Regarding claim 38, the support structures enable angular movement of the third cleaning/treating elements relative to the cleaning head (see Figures 2a-2b). Regarding claim 39, the first and second cleaning/treating elements are bristle tufts (see Figures). Regarding claim 40, the plurality of third cleaning/treating elements are disposed between the first and second cleaning/treating elements include bristle tufts (see Figures). Regarding claim 43, the

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cleaning head further comprises at least two cleaning/treating elements having different cross sections (see diameter of cross-sections of tufts 1 in the leftmost support structures 2 that have a smaller diameter than the other tufts 1 and 5). Regarding claim 45, at least one of the cleaning/treating elements extend further from the cleaning head than at least one other of the cleaning/treating elements (as shown in the arrangement of Figure 4). Regarding claim 46, the second cleaning/treating element includes a tuft (again, leftmost tuft 5 as shown in Figure 10g) that follows at least a portion of a contour of the free end of the cleaning head (Figure 10g). JP 2002-10832 does not disclose that the second element is an endmost element at the free end, the English translation in paragraph 38 states that Figures 10a-10g are various arrangement patterns of the bristles on the head.

JP 2001-507360 teaches a toothbrush head where there are elastic bodies (3) that support movable cleaning/treating elements (5, see Figures) and other cleaning/treating elements (10) are fixed non-movably to the hard body of the head (1, in the embodiments of Figures 10a-10d, 10f-10j). The movable cleaning/treating elements are rotatably movable relative to the cleaning head about a vertical axis (Figure 3). There are numerous configurations of the movable and non-movable cleaning/treating elements, and shows an arrangement in Figures 10f-10h wherein the non-movable cleaning/treating elements (tufts 10) are positioned at the endmost ends of the cleaning head and movable cleaning/treating elements (tufts 5) are positioned central to the non-movable cleaning/treating elements to conform with the shape of the tooth surfaces.

It would have been obvious for one of ordinary skill in the art at the time of the invention to substitute the conventional toothbrush head within device of Shekalim with a manual toothbrush that includes a brush head having three cleaning/treating elements, as JP 2002-10832 teaches, in order to provide cleaning elements that are capable of moving in many directions in order to effectively clean tooth surfaces and further it would have been obvious for one of ordinary skill in the art at the time of the invention to modify the configuration or arrangement of the cleaning/treating elements of Shekalim and JP 2002-10832 for a configuration that has both first and second cleaning/treating elements at endmost ends of the cleaning head, as JP 2001-507360 teach, so that the movable cleaning/treating element tufts of bristles adjust to the force of brushing and conform to the teeth surfaces while non-movably fixed cleaning/treating elements can additionally clean outlying areas.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 37-43 and 45-46 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Guidotti whose telephone number is (571) 272-1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter can be reached on (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Laura C Guidotti/  
Primary Examiner, Art Unit 3727

lcg